



STATE OF NORTH CAROLINA  
**OFFICE OF ADMINISTRATIVE HEARINGS**

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August 21, 2015

Jennifer Everett  
NC Department of Environment and Natural Resources  
**Sent via email to Jennifer.Everett@ncdenr.gov**

Re: Objection to Rule 15A NCAC 02B .0295

Dear Ms. Everett:

At its meeting yesterday, the Rules Review Commission objected to the above-captioned rule in accordance with G.S. 150B-21.10.

The Commission objected to the Rule, finding the agency failed to comply with the Administrative Procedure Act. Specifically, the Commission found that changing “are” to “may” in Subparagraph (l)(6) after publication constitutes a “substantial change” pursuant to G.S. 150B-21.2(g).

The Commission also objected based upon a lack of statutory authority. Specifically, the Commission found that Session Law 2014-95 required the agency to adopt a rule that was substantively identical to the recommended rule text contained in the April 10, 2014 Consolidated Buffer Mitigation Rule Stakeholder Report. The Commission found that the agency did not comply with the statutory mandate because it moved the language that was identified as an Alternative Buffer Mitigation Option in the stakeholder report (located in Paragraph m) to an accepted mitigation option in Paragraph l of the permanent rule. Therefore, the agency did not act within the statutory authority granted to it by the Session Law.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission’s actions, please let me know.

Sincerely,

Amanda J. Reeder  
Commission Counsel

Administration 919/431-3000 fax:919/431-3100	Rules Division 919/431-3000 fax: 919/431-3104	Judges and Assistants 919/431-3000 fax: 919/431-3100	Clerk’s Office 919/431-3000 fax: 919/431-3100	Rules Review Commission 919/431-3000 fax: 919/431-3104	Civil Rights Division 919/431-3036 fax: 919/431-3103
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